

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANTE ELLIS,

Defendant-Appellant.

UNPUBLISHED

July 28, 2000

No. 218495

St. Clair Circuit Court

LC No. 98-002034-FH

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant pleaded guilty to aiding and abetting attempted unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced defendant to three years' probation, with the first six months in jail, followed by a successful completion of a drug rehabilitation program. Defendant subsequently violated the terms of probation. The trial court sentenced defendant to two to five years' imprisonment for the probation violation. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in sentencing him to two to five years' imprisonment for the probation violation. We review sentencing matters for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 654; 461 NW2d 1 (1990).

Defendant argues that he is entitled to resentencing because the sentence for the probation violation was based on inaccurate information that was in the presentence investigation report for the aiding and abetting attempted unarmed robbery conviction. Defendant, however, did not challenge the accuracy of the presentence investigation report at or before sentencing for the aiding and abetting unarmed robbery conviction or the probation violation. Therefore, we decline to review this issue because it is unpreserved for review. *People v Bailey*, 218 Mich App 645, 647; 554 NW2d 391 (1996).

Defendant next argues that he is entitled to resentencing because the judge was not neutral and impartial. We disagree. Defendant correctly asserts that he was entitled to be sentenced by a neutral and detached judicial official. *People v Grove*, 455 Mich 439, 458; 566 NW2d 547 (1997). However, there was no evidence that the judge was not neutral and impartial when he sentenced

defendant for the probation violation. The judge merely expressed his frustrations with defendant in that he had given defendant an opportunity to rehabilitate himself and defendant squandered that opportunity by violating the terms of probation. Furthermore, the sentence imposed gives no indication that the court was biased. The trial court chose not to follow the recommendation of the updated presentence report and instead imposed a more lenient sentence than that recommended by the probation department. Under these circumstances, resentencing is not warranted.

Defendant finally argues that he is entitled to resentencing because the sentence was disproportionate. Once again, we disagree. When a trial court sentences a defendant for a probation violation, the sentencing guidelines do not apply. *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). A trial court abuses its discretion when it imposes a sentence on a defendant that is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn, supra* at 636.

The underlying offense was serious. After the victim did not give defendant some cocaine, defendant, who was a drug addict, choked him, tore off his gold necklace, and took his wallet. When the victim turned around to run, he was hit in the back of the head with a rock. Although this was defendant's first offense, he has displayed an inability to conform his conduct to acceptable norms. Within days of entering a drug rehabilitation program, defendant violated the terms of his probation by being out of place on three different occasions. He then had his colleagues falsify documents in an attempt to deceive the counselors regarding his whereabouts. In light of defendant's assaultive and deceptive behavior, and his refusal to follow rules, we conclude that the sentence was not disproportionate. The trial court did not abuse its discretion in sentencing defendant for the probation violation.

Affirmed.

/s/ Harold Hood

/s/ David H. Sawyer

/s/ Mark J. Cavanagh